

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: AMAZON SERVICE FEE  
LITIGATION

Case No.: 2:22-cv-00743-TL

(CONSOLIDATED CASE)

**DECLARATION OF BRIAN D.  
BUCKLEY IN SUPPORT OF  
AMAZON.COM, INC'S REQUEST FOR  
JUDICIAL NOTICE**

NOTE ON MOTION CALENDAR:  
FEBRUARY 3, 2023

ORAL ARGUMENT REQUESTED

Brian D. Buckley declares as follows:

1. I am a partner with the law firm of Fenwick & West LLP, counsel for Defendant Amazon.com, Inc. I have personal knowledge of the facts in this declaration and, if called upon to do so, could and would testify competently as to the matters set forth herein.

2. Attached as **Exhibit A** is a true and correct copy of the Amazon Conditions of Use ("COUs") as of January 20, 2022, around the time that Plaintiff allegedly placed her January 22, 2022 online Whole Foods Market ("WFM") delivery order. This version of the COUs was updated as of May 3, 2021, was accessible at <https://www.amazon.com/gp/help/customer/display.html/?nodeId=508088>, and was obtained using the Wayback Machine Internet Archiving facility ("Internet Archive"). The Internet Archive allows members of the public to conduct a search of historical versions of websites that the archive has indexed using the site's "Wayback Machine" search tool.

3. Attached as **Exhibit B** is a true and correct copy of Amazon’s email announcement, with the subject “Changes to Your Prime Grocery Benefits for Whole Foods Market Grocery Delivery,” with recipient’s email address redacted (dated September 24, 2021).

4. Attached as **Exhibit C** is a true and correct copy of a CNN Business article entitled “Amazon slaps a \$9.95 fee on Whole Foods deliveries. And Walmart pounces,” accessible at <https://www.cnn.com/2021/10/28/business/walmart-amazon-prime-fee/index.html> (dated October 28, 2021).

5. Attached as **Exhibit D** is a true and correct copy of a Washington Post article entitled “Prime members bristle at Whole Foods’ \$9.95 delivery surcharge: ‘It’s just rude,’” accessible at <https://www.washingtonpost.com/technology/2021/09/28/whole-foods-delivery-surcharge/> (dated September 28, 2021).

6. Attached as **Exhibit E** is a true and correct copy of the shopping cart webpage that a customer sees during the checkout process on the WFM section of amazon.com, with name and address redacted, accessible at [https://www.amazon.com/alm/storefront/ref=grocery\\_wholefoods?almBrandId=VUZHIFdob2xlIEZvb2Rz](https://www.amazon.com/alm/storefront/ref=grocery_wholefoods?almBrandId=VUZHIFdob2xlIEZvb2Rz) (captured on November 15, 2022).

7. Attached as **Exhibit F** is a true and correct copy of the “Schedule your order” webpage that a customer sees during the checkout process on the WFM section of amazon.com, with address redacted, accessible at [https://www.amazon.com/alm/storefront/ref=grocery\\_wholefoods?almBrandId=VUZHIFdob2xlIEZvb2Rz](https://www.amazon.com/alm/storefront/ref=grocery_wholefoods?almBrandId=VUZHIFdob2xlIEZvb2Rz) (captured on June 9, 2022).

Dated this 16th day of December 2022 in Seattle, Washington.

/s/ Brian D. Buckley  
Brian D. Buckley